

This letter discusses the exemption under the Gas Use Tax Law for business enterprises located in enterprise zones certified by the Department of Commerce and Economic Opportunity. See 35 ILCS 173/5-50. (This is a GIL.)

June 28, 2007

Dear Xxxxx:

This letter is in response to your letter dated June 19, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Can you please consider the following and let me know your comments?

A taxpayer has been in the enterprise zone since the enactment of the Gas Use Tax Law (i.e., October 1, 2003). The taxpayer provided a Gas Use Tax Exemption Certificate to the utility provider in May 2007. The Gas Use Tax Exemption Certificate shows the exemption claimed relates to the taxpayer's location within an enterprise zone certified by the Illinois Department of Commerce and Economic Opportunity. The utility provider turned off the Gas Use Tax for June 2007 forward. The taxpayer would like a refund of the Gas Use Taxes for the periods prior to June 2007 and has provided documentation to show the enterprise zone was in effect since October 1, 2003 and the utility provider bills show the taxpayer at the same address throughout the period. A letter from the enterprise zone administrator was also provided. This letter shows the address is located within the enterprise zone. Although the utility provider is not compelled to provide a refund to the taxpayer, is it allowed to provide a refund to the taxpayer and then submit Amended Gas Tax Returns to recover those monies from the Department of Revenue? If yes, would the utility provider be required to obtain a Gas Use Tax Exemption Certificate that is dated prior to May 2007?

It is our understanding that statute of limitations for refunds pertaining to 2003 have run out and that refunds for January 1, 2004 through June 30, 2004 will run out June 30, 2007.

Your help is appreciated.

DEPARTMENT'S RESPONSE:

Beginning October 1, 2003, a Gas Use Tax was imposed upon the privilege of using in this State gas obtained in a purchase of out of state gas at the rate of 2.4 cents per therm or 5% of the purchase price for the billing period, whichever is the lower rate.

One of the exemptions from Gas Use Tax provided in Section 5-50 of the Gas Use Tax Law is for:

“(1) Gas used by business enterprises located in an enterprise zone certified by the Department of Commerce and Economic Opportunity pursuant to the Illinois Enterprise Zone Act.” 35 ILCS 173/5-50.”

As the statutory language provides, the business enterprise need only be located in an enterprise zone certified by the Department of Commerce and Economic Opportunity to claim the exemption. The business itself does not need to be certified by the Department of Commerce and Economic Opportunity. However, the use of gas by business enterprises under that exemption does not include gas that is used for any residential purpose. See 86 Ill. Adm. Code 1471.125(a)(1). Please note that this exemption is limited to the Gas Use Tax Law and does not apply to liabilities incurred under the Gas Revenue Tax Act.

The provisions of Section 6 of the Retailers' Occupation Tax Act regarding claims for credit or refunds are incorporated by reference in Section 5-40 of the Gas Use Tax Law. 35 ILCS 173/5-40. Claims for credit and refunds are available when a taxpayer shows that he paid tax to the Department as a result of a mistake of fact or law. See 86 Ill. Adm. Code 130.1501. If a delivering supplier collects and remits to the Department tax for a transaction that should have been exempt, the delivering supplier may file a claim for credit. This is true even if a valid exemption certificate is provided for the transaction after the delivery of the gas and after tax has been paid. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a credit. In order to obtain a credit, the delivering supplier must first demonstrate that the delivering supplier has borne the burden of the tax erroneously paid. The Department cannot approve any claim for credit unless the claimant clearly establishes that it has unconditionally repaid the amount of the tax to the person from whom it had collected the tax. Please note that the Department has no authority to compel the delivering supplier to file a claim for credit. Whether or not the delivering supplier files a claim for credit with the Department is a private business matter.

Section 471.125 of the Department's administrative rules for the Gas Use Tax Law set out the requirements for documenting exempt transactions. 86 Ill. Adm. Code 471.125.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
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TDC:msk